

James R. Hawkins, Bar No. 192925
James@Jameshawkinsaplc.com
Christina M. Lucio, Bar No. 253677
Christina@Jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200/Facsimile: (949) 387-6676

Attorneys for Plaintiff KEVIN HARRIS,
on behalf of himself and all others similarly
situated

Tanja L. Darrow, Bar No. 175502
tdarrow@littler.com
LITTLER MENDELSON P.C.
633 West 5th Street, 63rd Floor
Los Angeles, California 90071
Telephone: (213) 443.4300/Facsimile: (213) 443.4299

Nathaniel H. Jenkins, Bar No. 312067
njenkins@littler.com
LITTLER MENDELSON P.C.
500 Capitol Mall, Suite 2000
Sacramento, California 95814
Telephone: (916) 830.7200/Facsimile: (916) 561.0828

Attorneys for Defendant
MCKESSON MEDICAL-SURGICAL INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN HARRIS, individually and on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL
INC., a Virginia Corporation; and DOES
1-50, inclusive,

Defendant.

Case No. 2:20-CV-01321-JAM-AC

**JOINT STIPULATION TO FURTHER
MODIFY THE INITIAL SCHEDULING
ORDER; ORDER**

Trial Date: August 7, 2023
Complaint Filed: April 3, 2020

JOINT STIPULATION TO FURTHER
MODIFY THE INITIAL SCHEDULING
ORDER; ORDER

Plaintiff KEVIN HARRIS (“Plaintiff”) and Defendant MCKESSON MEDICAL-SURGICAL INC. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel of record, hereby agree and respectfully stipulate as follows:

WHEREAS, Plaintiff filed his Complaint on April 3, 2020 in Placer County Superior Court, and Defendant timely removed this matter to this Court on July 1, 2020.

WHEREAS, on August 24, 2020, the Parties filed their Joint Report of their Rule 26(f) Conference and Proposed Discovery Plan (Dkt. 3), which included proposed deadlines for Plaintiff to file a motion for class certification, and for Defendant to oppose such a motion;

WHEREAS, on August 25, 2020, this Court issued its Initial Scheduling Order (Dkt. 4), however, the Court’s Initial Scheduling Order did not include any deadlines for Class Certification/De-Certification Motions, nor did it include deadlines for expert disclosures relating to Class Certification as requested in the Parties’ Joint Report (Dkt. 3).

WHEREAS, on August 31, 2020, Defendant filed its Objections to the Initial Scheduling Order (Dkt. 5), requesting that this Court set forth deadlines for Class Certification/De-Certification as requested in the Parties’ Joint Report.

WHEREAS, Defendant’s Objections to the Initial Scheduling Order remained pending, but the Parties’ thereafter propounded and responded to written discovery requests, and met and conferred to resolve alleged deficiencies in the discovery responses, including serving amended discovery responses, as well as engaging in efforts to resolve a discovery dispute relating to the scope of the alleged putative Class. Namely, the Parties disagreed as to whether Plaintiff’s class definition as plead in his complaint included just delivery drivers (like him), or included all non-exempt employees at Defendant’s California distribution centers in California (*e.g.*, material handlers).

WHEREAS, the Parties could not resolve their discovery dispute relating to the scope of the putative Class, and held an Informal Discovery Conference (“IDC”) before Magistrate Judge Claire on April 8, 2021. Magistrate Judge Claire determined that Plaintiff was entitled to conduct discovery based on a broader scope of the Class.

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1 **WHEREAS**, during the IDC, Defendant's counsel raised to Magistrate Judge Claire
 2 the fact that Defendant's Objections to the Initial Scheduling Order remained pending, to which
 3 Magistrate Judge Claire advised the Parties to file a stipulation to Modify the Scheduling Order to
 4 incorporate the deadlines set forth in the Parties' initial Joint Report

5 **WHEREAS**, Defendant's Objections to the Initial Scheduling Order remained
 6 pending, but on or about November 4, 2021, the Parties filed a Joint Stipulation and [Proposed] Order
 7 to Modify the Initial Scheduling Order to set Class Certification deadlines, but also allow them more
 8 time to conduct further discovery and/or prepare a dispositive motion after the Court rules on Class
 9 Certification (Dkt. 10). And on November 5, 2021, the Court issued an Order modifying the Initial
 10 Scheduling Order and setting Class Certification deadlines.

11 **WHEREAS**, in early 2022, the Parties agreed to pursue a private mediation in hopes
 12 to reach a global resolution of this matter before engaging in further discovery and litigation efforts
 13 (*i.e.*, before moving for Class Certification). And on February 14, 2022, the Parties filed a Joint
 14 Stipulation and [Proposed] Order to Modify the Initial Scheduling Order to continue the then-set Class
 15 Certification deadlines based on the fact they had reserved June 14, 2022 to mediate with Hon. Ronald
 16 M. Sabraw (Ret.), which was then after the current deadline to move for Class Certification under the
 17 then-Scheduling Order. On February 15, 2022, the Court issued an Order modifying the Initial
 18 Scheduling Order and setting the (current) Class Certification deadlines as follows:

- 19 • Last Day to Make Expert Witness Disclosures: **8/22/22**
- 20 • Last Day to Make Rebuttal Expert Disclosures: **9/12/22**
- 21 • Last Day to Complete Discovery Related to Class Certification (except expert
 22 discovery): **9/5/22**
- 23 • Last Day to Complete Expert Discovery Related to Class Certification: **9/16/22**
- 24 • Last Day to Move for/against Class Certification: **10/7/22**
- 25 • Opposition to Class Certification Motion(s) by: **10/21/22**
- 26 • Repl(ies) to Class Certification Motion(s) by: **10/28/22**
- 27 • Hearing on Class Certification Motion(s) on: **11/2/22**

- Last Day to Complete Remaining Discovery or file any Motion re Discovery:
1/23/23
- Dispositive Motions and/or Motion to De-Certify Class filed by: **3/3/23**
- Dispositive Motion or Motion to De-Certify Class hearing: **4/11/23**
- Final Pre-Trial Conference: **6/26/23**
- Jury Trial: **8/10/23**

WHEREAS, the Parties engaged in mediation with Judge Sabraw on June 14, 2022, but a number of issues discussed at the mediation prevented the Parties from reaching a settlement agreement in this case. Namely, the Parties were still in dispute of whether Plaintiff would be able to certify a class of Defendant's current/former employees as defined in his Complaint, along with the fact that Plaintiff's counsel informed defense counsel that they intended to file a separate Class Action Complaint in Placer County Superior Court with a new plaintiff who Plaintiff's counsel contended might be better suited to certify a class of Defendant's distribution center employees who did not hold driving positions like Plaintiff Harris. The week following the Parties' mediation, Plaintiff's counsel filed a second Class Action Complaint entitled *Darwin Colinayo v. McKesson Medical-Surgical, Inc., et al.*, Case No. SCV-0048672 ("*Colinayo*"). The *Colinayo* Action asserts many of the same causes of action, plus additional claims as in the instant action, but Plaintiff Colinayo held a different position from Plaintiff Harris (Mr. Colinayo was not a delivery driver).

WHEREAS, counsel for both Parties met and conferred and agreed, that based on the new *Colinayo* action, that Plaintiff Harris would narrow the scope of this Class Action to just delivery drivers (like himself), and that Plaintiff's counsel could pursue a larger/separate class within the *Colinayo* action (e.g., material handlers and other non-driving positions at Defendant's California Distribution Centers). Moreover, pursuant to this agreement, the Parties have agreed to return the instant action to mediation before Judge Sabraw in hope to resolve this matter (Plaintiff Harris) based on a more narrowed class definition. The Parties have reserved a mediation date of December 14, 2022, which was Judge Sabraw's next available date that worked with the Parties' schedules.

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1 **WHEREAS**, in order to allow the Parties time to return to mediation and complete any
 2 remaining, necessary discovery prior to having to move for and oppose class certification, the Parties
 3 stipulate to continue the current class certification deadlines and trial date out by a period of six
 4 months.

5 Accordingly, the Parties hereby stipulate to further modify the Scheduling Order to
 6 allow them the opportunity to mediate this case and potentially reach a resolution without the need to
 7 conduct further discovery and litigation efforts at this time.

8 **WHEREAS**, good cause exists to modify the Court’s scheduling Order as follows:

9 The district court is given broad discretion in supervising the pretrial phase of
 10 litigation...” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and
 11 internal quotation marks omitted). “A schedule may be modified only for good cause and with the
 12 judge’s consent.” Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d
 13 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing
 14 summary judgment motion after pretrial motion cut-off date).

15 To establish “good cause,” parties seeking modification of a scheduling order must
 16 generally show that, even with the exercise of due diligence, they cannot meet the order’s timetable.
 17 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,
 18 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became
 19 apparent that compliance with the scheduling order was not possible). In determining “good cause,”
 20 courts also consider the importance of the requested modification, the potential prejudice in allowing
 21 the modification, and, conversely, whether denial of the requested modification would result in
 22 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving
 23 amendment of pleadings).

24 Here, good cause exists for a modification of the Court’s scheduling order given the
 25 Parties’ agreement to return to mediation with Judge Sabraw in the near future. This modification to
 26 extend the Parties’ Class Certification brief schedule and related deadlines would allow the Parties the
 27 opportunity to focus their resources (both time and expense) on settlement as opposed to engaging in

costly class certification discovery and motion work. Consequently, a modification of the scheduling order would result in a savings of judicial resources in having to hear and decide a class certification motion. Finally, should the Parties' mediation be successful, the need for any further motion work or a trial in this case would be eliminated.

THEREFORE, upon good cause shown, the Parties stipulate to continue and/or modify the Scheduling Order as follows:

- Last Day to Make Expert Witness Disclosures: **2/24/23**
- Last Day to Make Rebuttal Expert Disclosures: **3/17/23**
- Last Day to Complete Discovery Related to Class Certification (except expert discovery): **3/10/23**
- Last Day to Complete Expert Discovery Related to Class Certification: **4/21/23**
- Last Day to Move for/against Class Certification: **5/19/23**
- Opposition to Class Certification Motion(s) by: **6/2/23**
- Repl(ies) to Class Certification Motion(s) by: **6/9/23**
- Hearing on Class Certification Motion(s) on: **6/21/23**
- [Assuming Certification Motion is decided on 11/2/22] Last Day to Complete Remaining Discovery or file any Motion re Discovery: **8/23/23**
- Dispositive Motions and/or Motion to De-Certify Class filed by: **9/22/23**
- Dispositive Motion or Motion to De-Certify Class hearing: **11/1/23**
- Final Pre-Trial Conference: **1/23/24**
- Jury Trial: **2/5/24**

IT IS SO STIPULATED.

1 Dated: August 8, 2022

JAMES HAWKINS APLC

2
3 /s/Christina M. Lucio (as approved on 8/8/22)

4 JAMES R. HAWKINS
5 CHRISTINA M. LUCIO
6 Attorney for Plaintiff
7 KEVIN HARRIS

8 Dated: August 8, 2022

LITTLER MENDELSON P.C.

9
10 /s/ Nathaniel H. Jenkins

11 TANJA L. DARROW
12 NATHANIEL H. JENKINS
13 Attorneys for Defendant
14 MCKESSON MEDICAL-SURGICAL INC.
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JOINT STIPULATION TO FURTHER
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ORDER

Upon good cause shown, the Court Orders the Scheduling Order to be modified as follows:

- Last Day to Make Expert Witness Disclosures: **2/24/23**
- Last Day to Make Rebuttal Expert Disclosures: **3/17/23**
- Last Day to Complete Discovery Related to Class Certification (except expert discovery): **3/10/23**
- Last Day to Complete Expert Discovery Related to Class Certification: **4/21/23**
- Last Day to Move for/against Class Certification: **5/19/23**
- Opposition to Class Certification Motion(s) by: **6/2/23**
- Repl(ies) to Class Certification Motion(s) by: **6/9/23**
- Hearing on Class Certification Motion(s) on: **6/21/23**
- [Assuming Certification Motion is decided on 11/2/22] Last Day to Complete Remaining Discovery or file any Motion re Discovery: **8/23/23**
- Dispositive Motions and/or Motion to De-Certify Class filed by: **9/22/23**
- Dispositive Motion or Motion to De-Certify Class hearing: **11/14/23, at 1:30 PM**
- Final Pre-Trial Conference: **1/19/24, at 10:00 AM**
- Jury Trial: **3/4/24, at 9:00 AM**

IT IS SO ORDERED.

DATED: August 8, 2022

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE

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